

BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP
Dennis S. Ellis (State Bar No. 178196)
dellis@bgrfirm.com
Keith J. Wesley (State Bar No. 229276)
kwesley@bgrfirm.com
Katherine F. Murray (State Bar No. 211987)
kmurray@bgrfirm.com
Matthew L. Venezia (State Bar No. 313812)
mvenezia@bgrfirm.com
2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067
Telephone: (310) 274-7100
Facsimile: (310) 275-5697

BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP
Carl Alan Roth (State Bar No. 151517)
croth@bgrfirm.com
801 South Figueroa, Suite 2000
Los Angeles, California 90017
Telephone: (213) 258-4710
Facsimile: (213) 725-9808

Attorneys for Plaintiff ROBERT DAYS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

ROBERT DAYS,

Plaintiff,

vs.

ROBINHOOD MARKETS, INC.;
ROBINHOOD FINANCIAL, LLC; AND
ROBINHOOD SECURITIES, LLC,

Defendants.

Case No. 4:21-cv-00696-HSG

SECOND AMENDED COMPLAINT FOR:

**(1) BREACH OF CONTRACT;
(2) CONCEALMENT;
(3) NEGLIGENT
MISREPRESENTATION;
(4) BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING;
(5) BREACH OF FIDUCIARY DUTY;
(6) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE;
(7) NEGLIGENT INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE;
(8) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW; AND
(9) VIOLATION OF CALIFORNIA'S
CONSUMER LEGAL REMEDIES ACT.**

JURY TRIAL DEMANDED

Trial Date: None Set

1 Plaintiff Robert Days (“Plaintiff”) brings this Complaint for damages, and equitable and
 2 declaratory relief, individually, and on behalf of all persons similarly situated, against defendants
 3 Robinhood Markets, Inc., Robinhood Financial, LLC, and Robinhood Securities, LLC
 4 (collectively “Robinhood”), and alleges as follows:

5 **INTRODUCTION**

6 1. Robinhood’s claimed mission to “democratize finance for all” would be laudable.
 7 Unfortunately, in every step of its journey, Robinhood has put its own financial interests above
 8 those of its customers and failed to fulfill its mantra.

9 2. Much ink has been spilled concerning the harm to customers stemming from
 10 Robinhood’s payment for order flow business model. We will not belabor the point here, other
 11 than to emphasize that while risky, high frequency trading benefits Robinhood because it makes
 12 money on a per-transaction basis, it harms customers. Encouraging customers to engage in high-
 13 frequency options trading on margin, regardless of sophistication, will lead to significantly worse
 14 outcomes than simply investing in index funds. In a recent Congressional hearing, Robinhood
 15 CEO Vlad Tenev essentially confirmed as much when he refused to answer whether Robinhood
 16 customers had outperformed the market.

17 3. Nonetheless, at issue in this case, is the financially irresponsible manner in which
 18 Robinhood has handled its expansion. While Robinhood positions itself as a popular app,
 19 celebrating its amount of users, similar to a social media platform, it is more. Robinhood is a
 20 financial services company that has now gotten “out in front of its skis” on multiple occasions,
 21 harming its customers because it did not have the financial infrastructure to support its operations.

22 4. Subject to separate litigation, in March of 2020, Robinhood’s trading platform
 23 suffered outages which even Robinhood admitted “are not acceptable[.]” But, Robinhood
 24 attempted to excuse the outages by arguing:

25 Multiple factors contributed to the unprecedented load that
 26 ultimately led to the outages. The factors included, among others,
 27 highly volatile and historic market conditions; record volume; and
 record account sign-ups.

28 In other words, Robinhood was not prepared to support the growth of its trading platform.

1 5. Thereafter, in May of 2020, Robinhood announced that it had raised additional
2 capital. In an effort to assure customers, Robinhood represented that it would use this funding “to
3 invest in scaling our platform, building new products, and accelerating build-out of our
4 operations.” Then, in August of 2020, Robinhood announced that it had raised additional capital,
5 again, representing that Robinhood would “continue to invest in improving our core product and
6 customer experience.” These statements were misleading.

7 6. In January of 2021, Robinhood’s failure to adequately capitalize its trading
8 platform was laid bare for the nation to witness. When retail investors were in the midst of
9 successful short squeezes of GameStop Corp. (GME), AMC Entertainment Holdings Inc. (AMC),
10 and Nokia Oyj (NOK), and other similarly-situated stocks, Robinhood halted purchases of the
11 securities on its platform, tanking their price and causing its customers to lose enormous amounts
12 of money. Even Mr. Tenev admitted Robinhood “knew this was a bad outcome for customers.”

13 7. Robinhood again attempted to excuse its behavior by arguing that unprecedented
14 volatility occurred in the market, raising its clearinghouse deposit requirements to an
15 unforeseeable level, and forcing Robinhood’s hand. The unforeseen volatility excuse was not good
16 enough in March of 2020, and it is not good enough now. Adequately capitalized brokerages were
17 able to avoid placing restrictions on the purchases of GME, AMC, NOK, and other similarly-
18 situated stocks.

19 8. This makes clear that when Robinhood moved to clearing trades in-house through
20 its Robinhood Securities entity in 2018, it was patently unprepared financially for such an
21 endeavor. Robinhood had only a small fraction of the capital of other established clearing brokers
22 to deposit as collateral for trading on its platform. And, when the rubber met the road in January of
23 2021, Robinhood lacked sufficient capital to ensure the continuity of trading on its platform.

24 9. At minimum, this lack of capitalization should have been disclosed to customers in
25 2018 when Robinhood began “Clearing by Robinhood.” And, it should have been disclosed again
26 when Robinhood suffered outages because it was unprepared for its growth. Instead, every step of
27 the way, Robinhood ensured customers that its platform was reliable, and only suffered outages
28 because of unforeseeable events beyond its control, e.g., “historic market conditions.”

1 Lake Mary, Florida.

2 **JURISDICTION AND VENUE**

3 17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
4 1332(d)(2)(A) because the amount in controversy well exceeds \$5 million and Plaintiff represents
5 a putative nationwide class that includes well in excess of 100 members, and the named plaintiff is
6 diverse from the defendants, residing in Missouri where the defendants' principal places of
7 business are located in California and Florida. Further, upon information and belief, the putative
8 classes defined herein include members from each of the 50 states.

9 18. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because, upon
10 information and belief, two of the three Robinhood entities' principal places of business are
11 located within this district, Robinhood is subject to personal jurisdiction here, and a substantial
12 part of the events or omissions that gave rise to the claims asserted herein occurred within this
13 district.

14 19. This Court has personal jurisdiction over Robinhood because, upon information
15 and belief, Robinhood maintains its principal place of business in California (while the Robinhood
16 Securities entity has an office in Florida, it is owned and controlled by its corporate parent in
17 California), and specifically within this judicial district. This Court also has personal jurisdiction
18 over Robinhood because Robinhood regularly markets and sells its services to customers in
19 California, and the trading restrictions discussed herein were imposed on California customers.

20 **GENERAL ALLEGATIONS**

21 **A. The Robinhood Platform, and How Robinhood Makes Money**

22 20. Founded in 2013, Robinhood provides a service allowing its customers to place
23 trades in the stock market, targeted at retail customers. Robinhood's platform is primarily app-
24 based and, as hinted by its name, Robinhood represents that it aims to "provide everyone with
25 access to the financial markets, not just the wealthy."

26 21. Robinhood does more than simply allow its retail customers to place traditional
27 trades. It allows its retail customers to engage in riskier investments, such as purchasing options
28 and trading on margin, regardless of sophistication, on-demand from their cell phone.

22. Prior to the incidents of late-January 2021, Robinhood received significant capital investments, in excess of a billion dollars, from entities like DST Global, Sequoia Capital, and D1 Capital Partners, among others. The latest of these investments valued Robinhood at \$11.2 billion.

23. On or about January 28, 2021, Robinhood raised in excess of an additional billion dollars in capital investments from a group of investors, which upon information and belief, included Sequoia Capital and Ribbitt Capital.

24. Upon information and belief, Robinhood has enjoyed exponential growth, now having more than 13 million registered users.

25. While Robinhood advertises “commission-free stock trading[,]” Robinhood in fact earns significant revenues from the trades placed on its platform. As a threshold matter, Robinhood does charge its customers fees for certain services it provides, for example, providing paper statements or its “Gold” membership, allowing customers instant access to a greater amount of deposited funds and the ability to trade on margin.

26. Moreover, when a customer places a trade on Robinhood, Robinhood routes the trade to one of its “market maker” partners for execution. These market makers pay Robinhood a fee for routing the trade to them (often termed a “rebate”), and execute the trade—standing as a middle man between those looking to buy and sell a particular security. The market makers also receive valuable data concerning the trading behaviors of Robinhood users in this process.

27. The aforementioned rebates are lucrative, upon information and belief, accounting for approximately \$180 million in revenue to Robinhood in just the second quarter of 2020. By placing their trades on Robinhood, Robinhood users provide it the ability to earn these rebates from the market makers, and thus, valuable consideration.

28. Because Robinhood earns these rebates on a per-transaction basis, Robinhood has traditionally been benefitted by its retail customers engaging in risky, high-frequency trading.

B. Robinhood Moves to “Clearing by Robinhood”, Through Its Robinhood Securities Entity

29. On or about October of 2018, Robinhood announced that it would clear trades in-house, referring to the program as “Clearing by Robinhood.” Clearing would be performed

1 through Robinhood Securities, a subsidiary of Robinhood Markets.

2 30. On October 10, 2018, Robinhood made an announcement on its website entitled
3 *Introducing Clearing by Robinhood*. This announcement described Clearing by Robinhood as “A
4 *new system that lowers fees and makes Robinhood faster and more reliable[.]*” The announcement
5 further explained that this was a “complex engineering and regulatory challenge[.]” but assured
6 customers by stating Robinhood “received licenses from FINRA, the DTCC, and the OCC
7 (Options Clearing Corporation); we assembled a team of nearly 100 people in Lake Mary, Florida,
8 many of whom specialize in clearing and compliance[.]” A true and correct copy of this
9 announcement is attached as Exhibit 1.

10 31. Upon information and belief, Robinhood coordinated press coverage for Clearing
11 by Robinhood. As one example, on October 10, 2018, CNBC published an article titled
12 *Robinhood launches its own trade-clearing system as customer growth surges*. Robinhood CEO
13 Vlad Tenev and Product Lead Christine Hall were interviewed for the article, and upon
14 information and belief, their statements and Robinhood’s announcement of the same day form the
15 basis of the factual claims made in the article. A true and correct copy of this announcement is
16 attached as Exhibit 2.

17 32. Robinhood also published a page on its website within its Help Center entitled
18 *What's Clearing by Robinhood?* On this page, Robinhood represented that:

19 We've cut more fees and made Robinhood faster and more reliable
20 by rebuilding our systems from the ground up.

21 33. Robinhood further boasted:

22 Before, Robinhood was only an introducing broker, which means
23 that we used a clearing brokerage for “back office” support, like
24 settling the trades you placed on Robinhood. Using a clearing broker
25 is the industry norm when a company like Robinhood wants to let its
26 users place trades. In fact, the top five clearing firms cleared 1,310
27 introducing firms in 2016.

28 Now, Robinhood is also a clearing broker, which means we have
 complete control over giving you the best experience out there!

A true and correct copy of this page is attached hereto as Exhibit 3.

34. On October 16, 2018, Robinhood published another article entitled *Under the Hood*

1 *of Clearing by Robinhood*. In this article, Robinhood discussed the development of its in-house
 2 clearing platform, and the challenges faced by Robinhood in so doing. A true and correct copy of
 3 this page is attached hereto as Exhibit 4.

4 35. What Robinhood failed to disclose in any of these statements—and what its current
 5 excuses for restricting purchasing of the affected securities suggests—is that Robinhood was
 6 undercapitalized and lacking in liquidity such that it could not make sufficient capital deposits to
 7 allow certain trading on its platform (or would have incurred costs to raise the capital it was
 8 unwilling to incur). Indeed, this solution certainly was not “more reliable” than other established
 9 clearinghouses, which upon information and belief, were able to allow continued purchasing of
 10 GME, AMC, NOK, and other similarly-situated stocks.

11 36. For the sake of comparison, Robinhood’s old clearing broker, Apex Clearing
 12 Corporation, disclosed in excess of \$4.3 billion in “[c]ash and securities segregated and on deposit
 13 for regulatory purposes” in its Financial Statements and Supplemental Schedules for the year of
 14 2019. Robinhood Securities, on the other hand, upon information and belief, had less than \$1.3
 15 billion in total net capital as of the morning of January 28, 2021.

16 37. This lack of disclosure is particularly troubling given Robinhood’s business model,
 17 which encourages retail traders to engage in short-term trading using options and margin, risky by
 18 its very nature. It was entirely foreseeable that Robinhood users could engage in trading deemed
 19 “volatile” by its clearinghouse and thus increase Robinhood’s deposit requirements.

20 **C. Rising Investor Interest in Heavily-Shorted Stocks, i.e., the “Short Squeeze”**

21 38. Beginning in January of 2021, many retail investors began to purchase positions in
 22 highly-shorter securities, such as GME.

23 39. As to GME, these investors realized that because in excess of 100 percent of the
 24 outstanding shares were shorted, significant purchases of the stock would force those holding
 25 excessive short positions, i.e., hedge funds, to compete for available shares to close their short
 26 positions, raising the price for the stock.

27 40. This trading strategy is known as a “short squeeze.” The strategy is not new,
 28 tracing its roots back to 1931, when a businessman named Clarence Saunders attempted to

1 purchase the available shares in his Piggly Wiggly grocery chain to combat significant shorting of
 2 the stock. A similar strategy was taken in regards to Volkswagen's stock in 2008, with hedge
 3 funds losing a reported *30 billion* dollars.

4 41. The initial results of the increased investor interest in GME were noteworthy, the
 5 price of the stock rose from \$17.69 per share on January 8, 2021, to \$469.42 per share on the
 6 morning of January 28, 2021. The meteoric rise in GME naturally left investors looking for the
 7 next highly-shorter stock, and ample information was publicly available to investors indicating
 8 that there would be increased interest surrounding other highly-shorter securities, including AMC
 9 and NOK, among other similarly-situated stocks.

10 42. As part of this trend, AMC saw its stock price rise from \$2.14 per share on January
 11 8, 2021, to \$19.88 at the close of the day on January 27, 2021. NOK saw its stock price rise from
 12 \$3.93 per share on January 8, 2021, to \$6.63 at the close of the day on January 27, 2021.

13 **D. The "Short Squeeze" Stands to Harm Robinhood and Its Investors Financially**

14 43. The increased popularity of short squeezes in the marketplace stood to cost
 15 Robinhood and its investors a significant amount of money. Upon information and belief, these
 16 financial interests were the motivating factor behind Robinhood's below-discussed decision to halt
 17 purchases of certain securities.

18 44. In its attempt to justify its actions in restricting the purchases of certain securities,
 19 Robinhood issued a statement stating that:

20 [C]learinghouses look at a firm's customer holdings as a portfolio.
 21 They use a volatility multiplier, looking at specific stocks, to
 22 quantify their risk. The clearinghouse may assign significant
 23 additional charges based on how much of one stock a firm's
 24 customers hold. If a firm's customers have more buy than sell
 orders, and the securities they're buying are more volatile, the
 deposit requirement will be higher. Clearinghouses can also require
 additional deposits if certain thresholds are met.

25 . . . The amount required by clearinghouses to cover the settlement
 26 period of some securities rose tremendously this week. How much?
 27 To put it in perspective, this week alone, our clearinghouse-
 28 mandated deposit requirements related to equities increased ten-fold.
 And that's what led us to put temporary buying restrictions in place
 on a small number of securities that the clearinghouses had raised
 their deposit requirements on.

1 45. Taking Robinhood at its word, what Robinhood explains is that in order to allow its
2 customers continued access to purchasing GME, AMC, NOK, and other similarly-situated stocks,
3 Robinhood would have been forced to deposit additional capital with a clearinghouse. Because
4 access to capital generally has a cost, presumably this would have raised the operating costs for
5 Robinhood to provide its trading platform, or required Robinhood's current owners to dilute their
6 ownership interest.

7 46. This demonstrates a significant financial interest of Robinhood in stemming the
8 tide of short squeezes—i.e., per Robinhood, these kinds of trades are viewed as more volatile by
9 Robinhood's clearinghouse, and thus, if the short squeezes failed and died out, Robinhood's
10 deposit requirements would be lessened. For a company struggling to meet its deposit
11 requirements, upon information and belief, this concern was an existential threat.

12 47. On January 31, 2021, Mr. Tenev provided additional details about this situation in
13 an interview with Elon Musk. In that interview, Mr. Tenev asserted that early in the morning of
14 January 28, 2021, the National Securities Clearing Corporation ("NSCC") requested an
15 approximately \$3 billion deposit. Mr. Tenev further asserted that after a phone call, the NSCC
16 lowered their request to approximately \$1.4 billion. Then, approximately an hour before trading
17 opened on January 28, 2021, the NSCC agreed to lower its deposit request to \$700 million, on the
18 condition that Robinhood would restrict trading of certain securities to sell only, as proposed by
19 Robinhood.

20 48. Thus, per Mr. Tenev's original representations, the financial difference to
21 Robinhood in restricting purchases of GME, AMC, NOK, and other similarly-situated stocks, was
22 an additional approximately \$700 million that Robinhood was either unable, or unwilling, to
23 deposit as collateral with the NSCC. To be clear, this is not a payment, but a deposit requirement
24 to backstop the trades.

25 49. On February 18, 2021, Mr. Tenev provided additional details in his prepared
26 testimony to the United States House of Representatives Financial Services Committee. This
27 testimony largely tracked Mr. Tenev's interview with Mr. Musk, but not exactly.

28 50. In that testimony, Mr. Tenev testified that, on January 27, 2021, Robinhood's base

1 clearinghouse deposit requirement was \$696 million. This amount is referred to as a “Value-at-
2 Risk” collateral requirement (“VaR”).

3 51. Mr. Tenev further testified that, early on the morning of January 28, 2021,
4 Robinhood received notice that its VaR collateral requirement increased to \$1.3 billion. However,
5 because \$1.3 billion exceeded Robinhood Securities’ net capital, an additional \$2.2 billion “excess
6 capital premium charge” was imposed by the NSCC, raising Robinhood’s total deposit
7 requirement to \$3.7 billion. (These numbers do not exactly add up, and a chart later provided gave
8 the VaR deposit requirement for January 28, 2021 as \$1.4 billion.)

9 52. Thus, while Robinhood uses the \$3 billion deposit request as a justification for its
10 restrictions on trading, upon information and belief, if Robinhood Securities had \$1.3 billion in net
11 capital, the excess capital premium charge would never have been imposed, and Robinhood could
12 have satisfied its clearinghouse deposit requirements without restricting purchases. That would
13 have been an increase of \$604 million, not \$3 billion.

14 53. Ultimately, after discussions with the NSCC, and Robinhood’s agreement to
15 restrict purchases of certain securities, Mr. Tenev testified that the NSCC dropped the excess
16 capital premium charge, and Robinhood was able to make an additional \$737 million deposit such
17 that trading could go forward on a limited basis.

18 54. It is not publicly known how Robinhood was able to make this deposit, given that
19 Robinhood Securities reportedly had less than \$1.3 billion net capital earlier that morning,
20 however, as noted above, it has been reported Robinhood raised in excess of an additional \$1
21 billion in capital the same day. Robinhood also referenced drawing on a line of credit in a court
22 filing in the Central District of California.

23 55. Despite Robinhood’s protests to the contrary, it is now clear that Robinhood
24 suffered a liquidity crisis. That is, upon information and belief, if Robinhood Securities had
25 sufficient net capital to avoid the excess capital premium charge, Robinhood could have avoided
26 any restrictions on the purchases of the restricted securities by making a total clearinghouse
27 deposit of \$1.3 billion. Alternatively, even considering the excess capital premium charge, if
28 Robinhood had sufficient capital to make the required clearinghouse deposit, Robinhood could

1 have avoided placing any restrictions on purchasing. But, it did not.

2 56. On February 23, 2021, Mr. Tenev admitted as much in an interview with Dave
3 Portnoy of Barstool Sports, stating, “If we had a bunch more headroom, uhh, yes, we probably
4 would have let things continue.”

5 **E. Robinhood Bars, and Then Severely Restricts, the Trading of GME, AMC,**
6 **NOK, and Similarly Situated Stocks on Its Platform**

7 57. Until January 28, 2021, Robinhood allowed its users to take positions in GME,
8 AMC, NOK, and other similarly-situated securities, both buying and selling. Many Robinhood
9 customers purchased AMC and NOK in reliance on the continued availability of the Robinhood
10 platform, allowing the customers to buy and sell when most advantageous to do so, with no
11 information to suggest Robinhood could be forced to restrict trading due to insufficient
12 capitalization.

13 58. Plaintiff in fact previously purchased positions in AMC and NOK, and intended to
14 purchase additional positions in those securities in the future, all through Robinhood. Plaintiff
15 relied on the continued availability of Robinhood’s platform, which he had been informed was
16 backed by a reliable clearinghouse, and had no information concerning Robinhood’s lack of
17 required capitalization.

18 59. However, on January 28, 2021, after the rise in GME gained widespread media
19 coverage, Robinhood barred its customers from buying several stocks, including AMC and NOK.
20 After a groundswell of outrage, Robinhood announced it will allow “limited buys of these
21 securities” starting on January 29, 2021. Limited was an understatement, and while the amounts of
22 allowed shares have varied, on January 29, 2021, Robinhood users were limited to 1 share of
23 AMC (an approximately \$10–\$15 investment) and 5 shares of NOK (an approximately \$25
24 investment).

25 60. Robinhood’s explanations for its actions in halting the trading of certain securities
26 were not originally entirely consistent.

27 61. While the above-quoted statements reference increased deposit requirements from
28 Robinhood’s clearinghouse, in an e-mail sent to customers on January 28, 2021, Robinhood stated

1 that its decision to restrict trading of certain securities was “made to best continue serving you[.]”
 2 with deposit requirements in place to “protect investors and the markets[.]” Similarly, in an
 3 interview with CNBC the same day, Robinhood CEO Vlad Tenev represented that the restrictions
 4 were put in place because to “protect the firm and *protect our customers* we had to limit buying in
 5 these stocks.”

6 62. Moreover, while Robinhood’s public statements reference increased deposit
 7 requirements, Robinhood has been hesitant to admit a liquidity problem. Mr. Tenev represented in
 8 his CNBC interview: “There was no liquidity problem, and to be clear, this was done
 9 preemptively.”

10 **F. Plaintiff’s and the Putative Classes’ Positions in AMC and NOK Were**
 11 **Harmed by This Market Manipulation, Whereas Robinhood Benefitted**

12 63. Robinhood’s action in first barring, and then severely limiting, the purchase of
 13 AMC and NOK on its platform artificially deflated the price of the stocks, harming all investors
 14 who held the stock, to the benefit of those holding short positions. This action further harmed
 15 investors who intended to buy the stocks in the future, relying on a fair market to be available in
 16 the securities.

17 64. Ironically, this action was to the benefit of hedge funds that held short positions in
 18 these stocks, allowing them to cover their shorts at a much lower price than they otherwise would
 19 have been required to purchase the shares. Again, Robinhood stole from the poor to give to the
 20 rich.

21 65. The harm caused to shareholders of AMC and NOK by Robinhood’s restriction of
 22 their purchase on its platform was massive. As to AMC, the stock closed on January 27, 2021 at
 23 \$19.88 per share. After Robinhood barred purchases on January 28, 2021, AMC closed at \$8.63
 24 per share, a massive 56.6 percent one-day decrease. In one day, AMC’s market capitalization
 25 decreased from approximately \$5.7 billion to approximately \$2.5 billion.

26 66. As to NOK, the stock closed on January 27, 2021 at \$6.63 per share. After
 27 Robinhood barred purchases on January 28, 2021, NOK closed at \$4.69 per share, a significant
 28 29.3 percent one-day decrease. In one day, NOK’s market capitalization decreased from

1 approximately \$37.3 billion to approximately \$26.4 billion.

2 67. However, even these numbers underestimate the harm caused to the AMC and
3 NOK stocks. Prior to Robinhood's restrictions on purchasing GME, AMC, NOK, and other
4 similarly-situated stocks, the price of GME was skyrocketing and attracting national attention, and
5 the prices for AMC and NOK were starting to take off as well, attracting increased investor
6 attention as the possible "next GameStop." Retail investor's plans to purchase AMC and NOK on
7 January 28, 2021, and the following days, were well-documented on the WallStreetBets subreddit
8 and other similar platforms across the internet.

9 68. Robinhood's restrictions not only stopped this momentum, but allowed a window
10 for those holding short positions in AMC and NOK to cover those shorts at a largely deflated
11 price, upon information and belief, saving hedge funds billions upon billions of dollars as opposed
12 to what would have happened if Robinhood never restricted trading.

13 69. Robinhood's manipulation of the market also squelched investor confidence in
14 their ability freely and fairly invest in AMC and NOK, and other similarly-situated securities.
15 Upon information and belief, Robinhood's actions in manipulating the market for these securities
16 scared off a large number of investors who would have otherwise participated in short squeezes of
17 AMC and NOK, massively deflating their stock prices in the short term, and the return available to
18 those holding positions in AMC and NOK.

19 70. Plaintiff is a retail customer of Robinhood, holding positions in both AMC and
20 NOK prior to January 28, 2021. Those positions were purchased independently, and without any
21 agreement to do so with any third party. Plaintiff purchased the positions through Robinhood
22 relying upon the continued availability of the platform and free trading of the securities.

23 71. Robinhood's action to bar purchases and then severely restrict purchases of those
24 stocks significantly damaged the value of Plaintiff's holdings in AMC and NOK, as it did other
25 holders of those stocks. As explained above, upon news that Robinhood would not allow those
26 stocks to be purchased, only sold, their values fell precipitously.

27 72. This left Plaintiff and other Robinhood customers with only two choices, either sell
28 immediately at the rapidly falling price, or hold, and risk losing their entire investment.

1 73. Robinhood’s actions to restrict purchases of these stocks also disallowed Plaintiff
2 from executing plans to buy additional positions in AMC and NOK, during the restricted period,
3 which otherwise would have been profitable.

4 74. Contrarily, Robinhood benefitted. As explained above, by barring and then severely
5 restricting purchases of AMC, NOK, and other similarly-situated stocks, Robinhood represents
6 that it lowered its deposit requirements with the NSCC. By squelching retail investor interest in
7 short squeezes—trading activity that Robinhood represents raises its deposit requirements—
8 Robinhood would not only decrease its deposit requirements in the short term, but on an ongoing
9 basis, if Robinhood was successful in killing the trend.

10 75. These deposit requirements are no small thing—with Robinhood being unable (or
11 unwilling) to meet its deposit requirements on January 28, 2021, continued popularity of trading
12 strategies deemed as “volatile” and requiring larger deposit requirements could quite literally put
13 the firm out of business.

14 76. Robinhood’s actions are without substantial justification, and made to the detriment
15 of its longstanding customers and the market. Where Robinhood claims it acted to protect its
16 customers or the market, it in fact caused them great harm. Indeed, in Mr. Tenev’s recent
17 interview with Elon Musk, he admitted: “We knew this was a bad outcome for customers.”

18 **G. Confidence in the Marketplace’s Integrity Is Harmed**

19 77. Robinhood’s actions received widespread coverage in the press, with their obvious
20 manipulation of the stock market causing outrage. The SEC shared in the concern, releasing a
21 statement that it would “closely review actions taken by regulated entities that may disadvantage
22 investors or otherwise unduly inhibit their ability to trade certain securities.”

23 78. In a rare moment of bipartisan agreement, both Democratic Representative
24 Alexandria Ocasio-Cortez and Republican Senator Ted Cruz agreed that Robinhood’s actions in
25 restricting the purchases of GME, AMC, NOK, and other similarly-situated stocks, were
26 “unacceptable”:
27
28



Ted Cruz ✓
@tedcruz

...

Fully agree. 🙌



Alexandria Ocasio-Cortez ✓ @AOC · Jan 28

This is unacceptable.

We now need to know more about @RobinhoodApp's decision to block retail investors from purchasing stock while hedge funds are freely able to trade the stock as they see fit.

As a member of the Financial Services Cmte, I'd support a hearing if necessary.
twitter.com/motherboard/st...

[Show this thread](#)

8:47 AM · Jan 28, 2021 · Twitter for iPhone

79. Again, upon information and belief, this unfairness in the stock market, to the benefit of large institutional investors like hedge funds, has already, and will continue to, prevent many retail investors from participating in the market. Specifically, the understanding that hedge funds play by a separate set of rules will prevent many retail traders from engaging in trading strategies that stand to harm hedge funds, like a short squeeze of AMC or NOK, for fear that even if the investment strategy is prudent, hedge funds and other powerful market participants will manipulate the market in their favor.

CLASS ACTION ALLEGATIONS

80. Plaintiff brings this action on behalf of himself and putative classes of Robinhood customers who are similarly situated under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

81. The AMC Class seeks monetary damages and injunctive relief, and is defined as follows:

- All persons or entities in the United States that held a position in AMC on January 28, 2021, purchased through Robinhood, that were harmed by Robinhood's actions to bar and later restrict trading of the stock.

82. The NOK Class seeks monetary damages and injunctive relief, and is defined as follows:

- All persons or entities in the United States that held a position in NOK on January

1 28, 2021, purchased through Robinhood, that were harmed by Robinhood's actions
2 to bar and later restrict trading of the stock.

3 83. Upon information and belief, the AMC Class and NOK Class include millions of
4 investors. The exact number and identities of members for the AMC Class and NOK Class is
5 known or readily ascertainable by Robinhood through a review of records they should maintain.
6 The number of persons who fall within the definition of both classes is so numerous and
7 geographically dispersed as to make joinder of all members of the classes in their individual
8 capacity impracticable, inefficient, and unmanageable so as to effectively deny each putative
9 AMC Class and NOK Class member his, her, or their right to prosecute and obtain legal and
10 equitable relief based on the claims and allegations made in this Complaint.

11 84. There are common questions of law and fact as to the AMC Class and NOK Class,
12 relating to and/or dispositive of the allegations made in the Complaint, and damages alleged
13 therein, including, but not limited to:

- 14 • Whether Robinhood breached its user agreement or the covenant of good faith and
15 fair dealing when restricting purchasing of AMC and NOK stocks;
- 16 • Whether Robinhood concealed the fact that it lacked the capital to assure the
17 availability of its trading platform;
- 18 • Whether Robinhood created a fiduciary duty with its customers by purporting to
19 restrict purchases of certain securities to "protect" them, and whether Robinhood
20 violated any such duty;
- 21 • Whether Robinhood intentionally or negligently interfered with its customers
22 planned, profitable transactions in AMC and NOK;
- 23 • Whether Robinhood engaged in unfair competition pursuant to Cal. Bus. & Prof.
24 Code § 17200 et seq. by restricting the purchasing of AMC and NOK;
- 25 • Whether Robinhood violated California's Consumer Legal Remedies Act Unfair by
26 restricting the purchasing of AMC and NOK; and
- 27 • The harm caused to the share price of AMC and NOK from Robinhood's
28 restrictions on the purchasing of those stocks.

25 85. The interests of Plaintiff, the AMC Class, and the NOK Class are aligned. Plaintiff
26 seeks to establish that Robinhood is liable for financial harm suffered by its customers resulting
27 from their inability to purchase AMC and NOK. Should Plaintiff succeed in establishing such
28 liability, each of the other members of the AMC Class and NOK Class would then be entitled to

1 similar compensation their damages.

2 86. The claims of Plaintiff are typical of the claims of the AMC Class and NOK Class.
3 Plaintiff purchased positions in AMC and NOK through Robinhood prior to January 28, 2021,
4 those positions being harmed by the inability of Plaintiff and other Robinhood customers to trade
5 in GME, AMC, NOK, and other similarly-situated stocks. Like many others, Plaintiff also
6 intended to purchase further positions in AMC and NOK during the period in which such
7 purchases were restricted.

8 87. The AMC Class and NOK Class are represented by counsel who are competent and
9 experienced in the prosecution and defense of similar claims and litigation, including class actions
10 filed, prosecuted, defended, and litigated under California and federal law, in California and
11 federal courts, in connection with claims and certification of nationwide classes. Counsel also has
12 significant experience in high-stakes commercial litigation and securities-related matters.

13 88. The prosecution of separate actions by individual members of the AMC Class and
14 NOK Class would create a risk of inconsistent or varying adjudications.

15 89. The questions of law and fact common to the members of the AMC Class and NOK
16 Class predominate over any questions of law or fact affecting only individual members of the
17 AMC Class or NOK Class. Primarily at issue is the appropriateness of the actions of Robinhood in
18 restricting purchases of AMC and NOK.

19 90. A class action is superior to other available methods for the fair and efficient
20 adjudication of this controversy. Treatment as a class action will permit a large number of
21 similarly situated persons to adjudicate their common claims in a single forum simultaneously,
22 efficiently, and without the duplication of effort and expense that numerous individual actions
23 would engender. Prosecution as a class action will eliminate the need for repetitious litigation—if
24 it were even feasible for many members of the AMC Class or NOK Class to proceed individually.

25 91. Members of the AMC Class and the NOK Class have no cognizable interest in
26 individually litigating and controlling the claims asserted herein as a general matter. To the extent
27 any particular class members have larger claims they desire to individually litigate, such concerns
28 can be addressed by offering class members an opt-out.

1 92. California is the proper and a desirable forum for the claims against Robinhood to
 2 be litigated. Robinhood is based in California, and its user agreement specifies California law as
 3 governing:

4 This Agreement and all transactions made in My Account shall be
 5 governed by the laws of the State of California (regardless of the
 6 choice of law rules thereof), except to the extent governed by the
 7 federal securities laws, FINRA Rules, and the regulations, customs
 and usage of the exchanges or market (and its clearing house) on
 which transactions are executed.

8 Thus, each of the contract-based claims brought against Robinhood must be governed by
 9 California law. To the extent any tort-based claims could be held to escape the scope of this
 10 governing law provision, California law provides appropriate remedies to each member of the
 11 AMC Class and NOK Class.

12 93. The AMC Class and NOK Class are readily ascertainable by review of
 13 Robinhood's records, which would also include contact information for the members. Thus, there
 14 does not exist any significant likely difficulties in managing the claims as a class action.

15 **FIRST CAUSE OF ACTION**

16 **(Breach of Contract)**

17 94. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full,
 18 each of the allegations set forth in paragraphs 1 through 93 above.

19 95. Robinhood, on one hand, and the Plaintiff and putative classes, on the other hand,
 20 entered into contracts whereby the Plaintiff and putative classes were allowed to use the
 21 Robinhood platform to place trades in the stock market, providing specifically as follows:

22 All orders for the purchase of securities given for My Account will
 23 be authorized by Me and executed in reliance on My promise that an
 actual purchase is intended.

24 96. In consideration for Plaintiff's and the putative classes' ability to use the
 25 Robinhood platform to trade, the Plaintiff and the putative classes provided consideration to
 26 Robinhood in the form of fees, and the ability to route their trades to market makers from which
 27 Robinhood receives additional fees, and access to trading data to sell to third parties, among other
 28 valuable consideration.

97. While Robinhood’s user agreement does purport to provide Robinhood with the ability to restrict trading in its “sole discretion[,]” that Robinhood only exercise such an option in good faith must be read into the contract or the contract would be rendered illusory.

98. Here, Robinhood restricted purchases of AMC and NOK, among other similarly-situated stocks, with the intent to roadblock the short squeeze trading strategy and avoid increased clearinghouse deposit requirements. This is not a good faith reason to restrict the Plaintiff's nor the putative classes' ability to make purchases of the restricted securities.

99. Moreover, the user agreement provides that:

I understand that Robinhood Financial has entered into a clearing agreement with Robinhood Securities whereby Robinhood Financial will introduce My Account to Robinhood Securities, and Robinhood Securities will clear all transactions, on a fully-disclosed basis. I understand that Robinhood Securities carries My Account(s) and is responsible for the clearing and bookkeeping of transactions[.]

100. To the extent Robinhood Securities refused to clear trades in AMC or NOK, it breached its duty to clear trades on behalf of Plaintiff and the putative classes under the user agreement.

101. As a result of these breaches, the Plaintiff's and the putative classes' positions in AMC and NOK have been substantially harmed.

SECOND CAUSE OF ACTION

(Concealment)

102. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full, each of the allegations set forth in paragraphs 1 through 101 above.

103. Robinhood disclosed to Plaintiff and the putative classes that it would clear trades in-house through Robinhood Securities. As set forth in more detail above, Robinhood represented that clearing trades in-house would be more reliable and give customers the best experience. Robinhood also specifically discussed the challenges it faced when developing Clearing by Robinhood.

104. However, Robinhood failed to disclose that it was undercapitalized and lacking in liquidity such that it could not make sufficient capital deposits to allow certain trading on its

1 platform (or would have incurred costs to raise the capital it was unwilling to incur). This solution
2 certainly was not “more reliable” than using other established clearinghouses with much higher
3 capital on hand, which upon information and belief, were able to allow continued purchasing of
4 GME, AMC, NOK, and other similarly-situated stocks.

5 105. This lack of disclosure is particularly troubling given Robinhood’s business model,
6 which encourages retail traders to engage in short-term trading using options and margin, risky by
7 its very nature. It was entirely foreseeable that Robinhood users could engage in trading deemed
8 “volatile” by clearinghouses and thus raise its deposit requirements, and if Robinhood had
9 insufficient capital to cover such increased deposit requirements, that should have been disclosed
10 to its customers.

11 106. Plaintiff and the putative classes were unaware that Robinhood was without
12 sufficient capital to meet increased clearinghouse deposit requirements associated with risky or
13 “volatile” trading.

14 107. Robinhood acted intentionally in concealing this information, knowing that a public
15 admission it lacked sufficient capital to back the Clearing by Robinhood platform would decrease
16 customer confidence, and thus lessen the amount of Robinhood users and revenue received by
17 Robinhood.

18 108. Had Plaintiff or the putative classes been aware that Robinhood was without
19 sufficient capital to meet increased clearinghouse deposit requirements associated with risky or
20 “volatile” trading, they would have chosen to trade with another firm with sufficient capital to
21 guarantee availability of the trading platform.

22 109. Plaintiff and the putative classes were harmed by this omission; their ability to
23 trade in AMC and NOK being restricted, whereas had they chosen another trading platform with
24 sufficient capitalization, this restriction and the resulting harm to their positions in AMC and NOK
25 would not have occurred.

26 110. Robinhood’s concealment of this information was a substantial factor in causing
27 this harm. It resulted directly in the inability of Plaintiff and the putative classes to freely purchase
28 AMC and NOK, and caused significant damage to the price of shares in those stocks as previously

1 explained.

2 **THIRD CAUSE OF ACTION**

3 **(Negligent Misrepresentation)**

4 111. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full,
5 each of the allegations set forth in paragraphs 1 through 110 above.

6 112. As quoted above, Robinhood represented that use of Robinhood Securities as
7 Robinhood's clearinghouse would make the Robinhood platform more reliable and give customers
8 the best experience.

9 113. Given the undercapitalization described above, resulting in Robinhood restricting
10 purchases of the affected securities, whereas, upon information and belief, other clearinghouses
11 were able to meet deposit requirements, these representations were not true.

12 114. Robinhood, being aware of its own finances and lack of capitalization when
13 compared to well-established clearinghouses, had no reasonable grounds to believe its
14 representations were true.

15 115. Robinhood intended that Plaintiff and the putative classes would rely on their
16 representation—the representation being made to assure Robinhood customers that Robinhood
17 would provide a reliable platform to trade in securities.

18 116. Plaintiff and the putative classes reasonably relied on this misrepresentation, and
19 were harmed by that reliance in the manner described above.

20 117. As explained above, reliance on this misrepresentation was a substantial factor in
21 the harm caused to the Plaintiff and putative classes, who otherwise would have chosen another
22 platform to trade.

23 **FOURTH CAUSE OF ACTION**

24 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

25 118. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full,
26 each of the allegations set forth in paragraphs 1 through 117 above.

27 119. Robinhood, by virtue of its contracts with Plaintiff and the putative classes, had an
28 implied covenant of good faith and fair dealing under those contracts.

1 120. Plaintiff and the putative classes performed or substantially performed under these
2 contracts by buying and selling securities using the Robinhood platform.

3 121. Robinhood violated that covenant by restricting the ability of Plaintiff and the
4 putative classes to purchase AMC and NOK.

5 122. This action was not taken in good faith, but upon information and belief, to
6 manipulate the market by disincentivizing a popular trading strategy that stood to harm Robinhood
7 by way of increased clearinghouse deposit requirements.

8 123. As a result of these breaches, the Plaintiff's and the putative classes' positions in
9 AMC and NOK have been substantially harmed.

10 **FIFTH CAUSE OF ACTION**

11 **(Breach of Fiduciary Duty)**

12 124. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full,
13 each of the allegations set forth in paragraphs 1 through 123 above.

14 125. Robinhood, by taking the action to restrict purchasing of AMC, NOK, and other
15 similarly-situated stocks, purportedly to "protect" its customers, created a fiduciary duty similar to
16 that of an investment advisor.

17 126. Robinhood breached that duty by acting only in its own interests, to reduce
18 clearinghouse deposit requirements.

19 127. As a result of these breaches, the Plaintiff's and the putative classes' positions in
20 AMC and NOK have been substantially harmed.

21 **SIXTH CAUSE OF ACTION**

22 **(Intentional Interference with Prospective Economic Advantage)**

23 128. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full,
24 each of the allegations set forth in paragraphs 1 through 127 above.

25 129. The Plaintiff and the putative classes, as set forth in detail herein, stood to make
26 significant profit by virtue of their holdings in and future purchases of AMC and NOK.
27 Specifically, Plaintiff and the putative classes intended to enter into transactions with third parties
28 to sell their shares at a profit in the future.

1 transactions involving AMC and NOK, the increased investor interest in those stocks receiving
 2 significant attention in the public domain, and their restriction being the subject of discussion with
 3 the NSCC.

4 140. Robinhood failed to act with reasonable care when implementing these restrictions.

5 141. Robinhood acted with improper motive in restricting purchases of AMC and NOK,
 6 motivated by manipulating the market to disincentive a trading strategy that was stretching its
 7 deposit requirements beyond comfort levels and threatening the availability of its trading platform.

8 142. This restriction of the ability to purchase AMC and NOK harmed the profitability
 9 of Plaintiff's and the putative classes' planned sales of their shares, and was a substantial cause of
 10 the same.

11 **EIGHTH CAUSE OF ACTION**

12 **(Violation of California's Unfair Competition Law [Cal. Bus. & Prof. Code § 17200 et seq.]**

13 143. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full,
 14 each of the allegations set forth in paragraphs 1 through 142 above.

15 144. The aforementioned conduct by Robinhood is unlawful, violating California and
 16 Federal securities laws.

17 145. Robinhood engaged in unfair competition in the classic sense by purporting to offer
 18 a trading platform backed by sufficient capital, when it was not, thus stealing customers that
 19 otherwise would have chosen other platforms.

20 146. It also engaged in unfair competition in the classic sense by not allowing its
 21 customers to fairly compete with institutional investors when it comes to trading AMC and NOK,
 22 and other similarly-situated stocks.

23 147. Plaintiff and each member of the putative classes suffered an injury as a direct and
 24 proximate result of Robinhood's unlawful and anticompetitive conduct.

25 148. Plaintiff and the putative classes are without an adequate remedy at law. Unless
 26 enjoined, Robinhood will continue to unlawfully interfere in the market for highly-shorter stocks,
 27 like AMC and NOK.

28 149. Upon information and belief, the above-described unlawful conduct occurred in

1 significant portion within California.

2 **NINTH CAUSE OF ACTION**

3 **(Violation of California's Consumer Legal Remedies Act Unfair [Cal. Civ. Code § 1750 et**
4 **seq.]**

5 150. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full,
6 each of the allegations set forth in paragraphs 1 through 149 above.

7 151. Robinhood has committed unlawful acts as defined by California Civil Code §
8 1770, by engaging in the unlawful practices described above.

9 152. Plaintiff and each member of the putative classes suffered an injury as a direct and
10 proximate result of Robinhood's unlawful activity.

11 153. Plaintiff and the putative classes are without an adequate remedy at law. Unless
12 enjoined, Robinhood will continue to unlawfully interfere in the market for highly-shorter stocks,
13 like AMC and NOK.

14 154. Upon information and belief, the above-described operations of Robinhood occur
15 in California, where it is headquartered.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, the putative AMC Class, and the putative NOK Class, pray for
18 relief against Robinhood as follows:

19 1. For preliminary and permanent injunctions enjoining and restraining Robinhood
20 from restraining or attempting to restrain its customers from trading in AMC or NOK, or other
21 securities with significant short positions;

22 2. For money damages in the form of the lessened value in their AMC and NOK
23 positions, and loss of future profitable acquisitions of AMC and NOK positions, in an amount
24 according to proof, but well in excess of \$5 million;

25 3. For punitive damages according to proof;

26 4. For pre-judgment interest on all damages awarded by this Court;

27 5. For reasonable attorneys' fees and costs of suit incurred herein; and

28 6. For any other such relief as this Court deems just and proper.

1 DATED: March 15, 2021

BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP

2 Dennis S. Ellis
3 Keith J. Wesley
4 Katherine F. Murray
5 Carl Alan Roth
6 Matthew L. Venezia

By: /s/ Matthew L. Venezia

Matthew L. Venezia

Attorney for Plaintiff Robert Days

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED: March 15, 2021

BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP

Dennis S. Ellis
Keith J. Wesley
Katherine F. Murray
Carl Alan Roth
Matthew L. Venezia

By: /s/ Matthew L. Venezia

Matthew L. Venezia

Attorney for Plaintiff Robert Days

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2021, I electronically filed the foregoing **SECOND AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

SERVICE LIST

Robert Days v. Robinhood Markets, Inc., et al.
Case No. 4:21-cv-00696-YGR

C. Brandon Wisoff
Eric D. Monek Anderson
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, California 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480
Email: emonekanderson@fbm.com
Email: bwisoff@fbm.com

Antony L. Ryan
Kevin J. Orsini
Brittany L. Sukiennik
Cravath, Swaine & Moore LLP
815 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700
Email: aryan@cravath.com
Email: korsini@cravath.com
Email: bsukiennik@cravath.com



Andrea A. Augustine